

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

BOBBY E. BURTON JR. #836846 §  
v. § CIVIL ACTION NO. 6:13cv776  
INMATE TRUST FUND §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Bobby Burton, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed with prejudice. The Magistrate Judge observed that Burton had previously litigated the same issue which he presents in this case, and the prior lawsuit was dismissed as frivolous in that it was barred by the statute of limitations. Burton v. Inmate Trust Fund, civil action no. 6:13cv348 (E.D.Tex., dismissed August 22, 2013, no appeal taken). Hence, the Magistrate Judge determined that the present lawsuit is frivolous and malicious. *See Lewis v. Secretary of Public Safety and Corrections*, 508 Fed.Appx. 341, 2013 WL 219203 (5th Cir., January 21, 2013).

A copy of the Magistrate Judge's Report was sent to Burton at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal

conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

**ORDERED** that the Report of the Magistrate Judge (F ocket P o06) is hereby **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the above-styled civil action be and hereby is **DISMISSED WITH PREJUDICE** as frivolous and malicious. 28 U.S.C. §1915(e)(2). It is further

**ORDERED** that the Clerk shall send a copy of this order to the Administrator of the Three Strikes List for the Eastern District of Texas. Finally, it is

**ORDERED** that any and all motions which may be pending in this action are hereby **DENIED**.

So ORDERED and SIGNED this 23rd day of April, 2014.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized initial 'L' on the left and a smaller 'A' on the right.

**LEONARD DAVIS**  
**UNITED STATES DISTRICT JUDGE**